

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM 32

I. D. # 11806

ENERGY DIVISION

RESOLUTION E-4545

January 24, 2013

REDACTED
RESOLUTION

Resolution E-4545. Pacific Gas and Electric Company requests approval of an amended and restated power purchase agreement with Rice Solar Energy, LLC which is a subsidiary of SolarReserve, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the amended and restated power purchase agreement between Pacific Gas and Electric Company and Rice Solar Energy, LLC.

ESTIMATED COST: Confidential

By Advice Letter 3989-E filed on January 17, 2012.

SUMMARY

Cost recovery for Pacific Gas and Electric Company's amended and restated renewable energy power purchase agreement (PPA) with Rice Solar Energy, LLC is approved.

Pacific Gas and Electric Company (PG&E) requests approval of a power purchase agreement (PPA) with Rice Solar Energy, LLC (Rice Solar) which is a subsidiary of SolarReserve, LLC. Rice Solar proposes to develop a 150 megawatt (MW) thermal solar power tower facility with molten salt storage near Rice, CA. Forecast annual generation of 448 gigawatt hours (GWh) is contracted to be delivered over a 25 year term beginning on June 1, 2016.

The PPA under consideration for approval is an amended and restated contract (Amended PPA) that was originally approved by the California Public Utilities Commission (CPUC) by Resolution E-4340 on July 29, 2010 (Original PPA). In 2011, Rice Solar decided to change the point of interconnection for the project which resulted in the re-opening of the contract. In late 2011, PG&E and Rice

Solar executed the Amended PPA which; 1) changes the point of interconnection from within the California Independent System Operator (CAISO) balancing authority area (BAA) to the Western Area Power Administration BAA with delivery to PG&E at the Mead substation, 2) revises the guaranteed commercial operation date (GCOD) from October 1, 2013 to June 1, 2016 to account for the increase in time necessary to interconnect through WAPA to Mead, and 3) changes the payment provisions to mitigate any pricing risk associated with a change in the point of interconnection. As a result, Advice Letter 3989-E was filed on January 17, 2012 which requests approval of the Amended PPA.

The CPUC approves cost recovery for the Amended PPA between PG&E and Rice Solar. Cost recovery is being approved for three reasons. First, the price and value of the Amended PPA compare favorably against shortlisted bids resulting from PG&E's 2009 RPS Solicitation. Second, the GCOD has been extended to June 1, 2016 which is in better alignment with PG&E's RPS portfolio need. Third, the Rice Solar project will be utilizing molten salt storage technology, giving it the ability to strategically shift and optimize load based on changes in electricity demand and the potential need for grid stabilization.

The following table summarizes the project-specific features of the agreement:

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Rice Solar	Tower with Salt Storage	25	150	448 GWh	6/1/2016	Rice, CA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).¹ The RPS

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

program is codified in Public Utilities Code Sections 399.11-399.31.² Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.³

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of AL 3989-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's Advice Letter 3989-E was timely protested on February 6, 2012 by the Division of Ratepayer Advocates (DRA) and Californians for Renewable Energy (CARE). PG&E responded to the protests on February 13, 2012.

DRA recommends that the Commission deny cost recovery for the Amended PPA on the following grounds: 1) uncompetitive price, 2) lack of RPS portfolio need, and agrees with the Independent Evaluator (IE) report which opined that it is difficult to conclude that the Amended PPA merits Commission approval.

CARE also believes that the cost of the Amended PPA is uncompetitive and that PG&E lacks portfolio need for the project. CARE also asserts that it has filed a

² All further references to sections refer to Public Utilities Code unless otherwise specified.

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

lawsuit against the Rice Solar project which has the potential to negatively impact the development of the facility.

PG&E believes that the Commission should reject the DRA and CARE protests and approve the Amended PPA for the following three reasons: 1) the technology is unique and allows PG&E to more easily integrate intermittent solar energy delivery from the project, 2) the COD is more in alignment with PG&E's portfolio need, and 3) the revised terms of the PPA do not add material risk/cost to PG&E's customers. PG&E also states that "while the price in the Amended PPA may be higher than market alternatives, the benefits...support a determination that the Amended PPA is just, reasonable and in the interests of PG&E's customers." PG&E also notes that DRA and CARE fail to recognize the unique operational characteristics of the project which includes molten salt storage. Lastly, PG&E believes the Commission should disregard CARE's assertion regarding its lawsuit against Rice Solar and suggests that the lawsuit should be addressed in the United States District Court and should not be a basis for rejecting the Amended PPA.

DISCUSSION

PG&E requests Commission approval of an amended and restated renewable energy contract between PG&E and Rice Solar.

Rice Solar is a wholly owned subsidiary of SolarReserve, LLC, developer of solar thermal (power tower) generation facilities that incorporate molten salt storage. The company is headquartered in Santa Monica, CA with offices in Madrid, Spain and Sandtown, South Africa. The 150 megawatt (MW) Rice Solar project is proposed to deliver estimated annual generation of 448 GWh over a term of 25 years.

SolarReserve is currently developing two projects that utilize its molten salt power tower technology. The first is a 110 MW power tower generation facility called the Crescent Dunes Solar Energy Project in Tonopa, Nevada. According to SolarReserve the project is on track and expected to be completed by the end of 2013. The second facility is being developed by SolarReserve as 50/50 joint venture partner with Spanish developer Preneal to construct a 50 MW project in Spain. Rice Solar is the third project that SolarReserve proposes to construct and it would also be the largest project the company has undertaken to date.

The Rice Solar project was originally proposed in PG&E's 2009 RPS Solicitation but the contract was negotiated bilaterally in November 2009. The Original PPA was submitted for approval to the Commission on December 22, 2009 in Advice Letter (AL) 3581-E, which was approved on July 29, 2010 in Resolution 4340-E. Under the Original PPA, the Rice Solar project's point of interconnection was at the Colorado River substation within the CAISO BAA.

In late 2010, SolarReserve decided to forgo its Large Generator Interconnection Agreement (LGIA) study with the CAISO due to potential timing issues associated with the development of the Colorado River Substation and the associated risk of the Rice Solar project not meeting its guaranteed commercial operation date (GCOD). In April 2011, SolarReserve and PG&E began negotiations to execute an Amended PPA that changed the point of interconnection and include other provisions associated with this modification to the Original PPA. After extensive negotiations, PG&E and SolarReserve executed an Amended PPA in late 2011 after which PG&E filed AL 3989-E on January 17, 2012 seeking approval of the Amended PPA. The Amended PPA includes the following key revisions:

- 1) The point of interconnection changes from interconnecting directly with the California Independent System Operator (CAISO) balancing authority area (BAA) at the Colorado River substation (CR) to interconnecting vis-a-vis a pseudo-tie agreement with the Western Area Power Administration (WAPA) BAA at WAPA's Mead substation.
- 2) The commercial operation date (COD) changes from October 1, 2013 to June 1, 2016 to account for delays in achieving a pseudo-tie agreement and delays in CPUC approval.
- 3) New provisions were included to ensure the full delivery/value of Resource Adequacy (RA) capacity full value of energy deliveries from Mead.

PG&E requests that the Commission issue a resolution that:

1. Approves the Amended PPA in its entirety, including payments to be made by PG&E pursuant to the Amended PPA, subject to the Commission's review of PG&E's administration of the Amended PPA;
2. Finds that any procurement pursuant to the Amended PPA constitutes procurement from an eligible renewable resource for purposes of

determining PG&E's compliance with any obligation that it may have to procure eligible renewable resources pursuant to the RPS Legislation (PU Code Sec. 399.11 et seq.), D.03-06-071 and D.06-10-050 or other applicable law;

3. Finds that all procurement and administrative costs, as provided by PU Code Sec. 399.139(g), associated with the Amended PPA shall be recoverable in rates;
4. Adopts the following finding of fact and conclusion of law in support of CPUC approval:
 - a. The Amended PPA is consistent with PG&E's 2011 RPS procurement plan.
 - b. The terms of the Amended PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the amended and restated PPA:
 - a. The utility's costs under the Amended PPA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the amended and restated PPA are subject to provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
 - a. The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.
7. Adopts a finding of fact and conclusion of law that deliveries from the Amended PPA shall count in full toward PG&E's RPS procurement requirements and shall be exempt from the RPS portfolio content category requirements because the Original PPA and the Amended PPA meet the criteria set forth in Section 399.16(d) of the Public Utilities Code.

Energy Division Evaluated the Amended PPA on these Grounds:

- Consistency with PG&E's 2011 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need
- Price Reasonableness and Value
- Independent Evaluator (IE) Report
- Consistency with RPS Standard Terms and Conditions
- Procurement Review Group Participation
- Contribution to Minimum Long Term Contracting Requirement
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

Consistency with PG&E's 2011 RPS Procurement Plan

California's RPS statute requires the Commission to direct each utility to prepare an annual RPS Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.⁴ The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan. PG&E's stated preferences in its 2011 RPS Plan include 1) projects that allow it to address its long-term 33% mandate under the third compliance period, and 2) projects with high viability. Because the GCOD of the Amended PPA has been pushed out from October 1, 2013 to June 1, 2016, the Rice Solar project can help PG&E meet its long-term needs in the third compliance period that begins in 2017.

The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.

⁴ §399.13.

Consistency with PG&E's Least-Cost Best-Fit Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁵ The decision offers guidance regarding the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations. PG&E’s bid evaluation includes a quantitative and qualitative analysis, as well as each proposal’s absolute value to PG&E’s customers and relative value in comparison to other proposals. The basic components of PG&E’s LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission’s LCBF Decisions D.03-06-071 and D.04-07-029.

Consistent with these decisions, the four main steps undertaken by PG&E are: (1) determination of market value of bid; (2) calculation of transmission adders and integration costs; (3) evaluation of portfolio fit, and; 4) consideration of non-price factors. PG&E applied these criteria to the proposals received in the 2011 solicitation in order to establish a short-list of proposals from bidders with whom PG&E would engage in contract discussions. PG&E’s 2011 RPS solicitation was the most recent solicitation at the time that the Amended PPA was negotiated and executed.

PG&E examined the reasonableness of the Amended PPA using the same LCBF evaluation methodology that it used for RPS offers received for the 2011 RPS solicitation. Although the Amended PPA was negotiated bilaterally, PG&E determined that the agreement was reasonable and compared favorably to proposals that PG&E received in its 2011 Solicitation and to other bilateral offers negotiated around the same time. PG&E stated in AL 3989-E that while the economics of the Rice Solar project compare unfavorably to its 2011 RPS Solicitation short-list, PG&E entered into the Amended PPA for the following reasons:

- 1) The project provides technology diversity to PG&E’s portfolio;
- 2) The technology allows PG&E to more easily integrate deliveries of intermittent solar energy from the project;

⁵ See D.04-07-029

- 3) The Amended PPA does not add material risk/cost to PG&E customers, and;
- 4) The Amended PPA is better aligned with PG&E's portfolio need because the new GCOD.

PG&E's decision to execute the Amended PPA primarily on the basis of non-price factors and portfolio need negates the significant decrease in pricing that has occurred over the last two years for renewables projects resulting in the execution of the Amended PPA with disregard to results from PG&E's 2011 RPS Solicitation. However, the core characteristics of the Rice Solar project – technology, location, permitting – remain unchanged from the Original PPA, as do the qualitative attributes that the project will provide such as grid stabilization. Therefore, the Amended PPA is viewed as the same project that was submitted for CPUC approval in the Original PPA and it is prudent to compare the Amended PPA to projects that were shortlisted at the time the Original PPA was executed. That said, the Amended PPA was executed in 2010 and should be compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation. When compared against these cohorts, the Rice Solar project compares favorably on price and value. See Confidential Appendix A for more details.

PG&E adequately examined the reasonableness of the Amended PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.⁶ SB2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent

⁶ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.”⁷

PG&E’s RPS portfolio need falls within the third compliance period which is between 2017 and 2020. The extension of the GCOD for the Rice Solar project to June 2016 better aligns deliveries from the project with PG&E’s RPS compliance needs. The Commission disagrees with both DRA and CARE’s concern that the Rice Solar Project does not satisfy the need requirements for RPS compliance purposes. The new GCOD of June 1, 2016 is better aligned with PG&E’s forecast portfolio need and DRA and CARE’s protests are denied on this basis.

The Commission finds that generation from the Rice Solar project adequately fits the portfolio need requirements of PG&E’s RPS portfolio.

Price Reasonableness and Value

The Amended PPA was compared to projects offered to PG&E resulting from its 2009 RPS Solicitation. The Original PPA was executed in early 2010 and the Amended PPA was submitted to the Commission in early 2012. Because the core characteristics of the Rice Solar project did not change materially or impact the value of the project since the Original PPA was executed, Energy Division evaluated the Amended PPA against the original set of cohorts from PG&E’s 2009 RPS Solicitation. If the core characteristics and the value of the Rice Solar project had changed materially since the execution of the Original PPA, then Energy Division would have compared the Amended PPA to shortlisted projects resulting from PG&E’s 2011 RPS Solicitation and recently executed contracts approved by the CPUC.

Based on a comparison of the Amended PPA’s price and value compared to shortlisted projects resulting from PG&E’s 2009 RPS Solicitation, the Rice Solar project is competitive. The Commission disagrees with both DRA and CARE’s concern that the Rice Solar project is not competitive based on price and value when benchmarked against the proper cohorts and denies both protests on this basis. See Confidential Appendix A for a price and value comparison of the Amended PPA.

⁷ See § 399.15(b)(2)(B), SB 2 (1X)

The Commission is sensitive to DRA and CARE's concern that the Amended PPA does not compare favorably to current market metrics. The health of the renewables market in California depends on fairness and transparency in the procurement process. The Commission is currently undertaking a procurement reform initiative that proposes to limit the time allowed for contract negotiations with the intention of aligning contract pricing with the most current market conditions. See the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals.⁸

The price and net market value of the Amended PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation.

The CPUC approves cost recovery for the Amended PPA between PG&E and Rice Solar.

Independent Evaluator Report (IE)

PG&E retained Arroyo Seco Consulting as the Independent Evaluator for the Amended PPA. The IE states in its report:

"Arroyo would find it difficult to conclude that the amended and restated Rice Solar contract merits CPUC approval... The contract is now distinctly uncompetitive when compared to alternatives available to PG&E. Despite progress the developer has made, Rice Solar still ranks low in project viability... to competing alternatives. To execute the amended Rice Solar contract while rejecting numerous 2011 Offers for projects with both higher viability, higher net (market) value, and lower price creates the appearance of unfairness to those project developers... Observers who have a different set of priorities and judgments regarding tradeoffs of price, ratepayer risk, fairness to competitors, technology diversity, and firmness of generating output could certainly come to a different opinion."

⁸ See <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M029/K970/29970716.PDF>

The IE benchmarked the Amended PPA against shortlisted bids resulting from the 2011 RPS Solicitation. The Rice Solar project's core attributes have not changed materially since the Original PPA was signed in early 2010 nor has there been a material change in the price or value of the Amended PPA. That said, the proper cohorts to compare the Amended PPA against are shortlisted projects resulting from PG&E's 2009 RPS Solicitation. Furthermore, since the execution of the Original PPA, the Rice Solar project has achieved significant project milestones improving the overall viability of the project. In addition, the developer is on track for the completion of its Crescent Dunes Solar Energy Project in Nevada by the end of 2012, which utilizes the same technology that the Rice Solar project will use. See Confidential Appendix A for a discussion on project viability.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. The Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The Amended PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group of non-market participants to review and assess the details of the investor-owned utilities' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.

According to PG&E, participants in its PRG include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, California Utility Employees, the Union of Concerned Scientists, California Department of Water Resources, and Jan Reid, as a PG&E ratepayer. PG&E informed the PRG of the Amended PPA on July 20, 2011, December 1, 2011, and December 13, 2011.

Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.

Contribution to Minimum Quantity Requirement for Long-Term Contracts

Section 399.13(b) requires that the commission establish "minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration."

Because the term of the Amended PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.⁹ Generating facilities using certain renewable resources, including geothermal energy, are deemed compliant with the EPS.¹⁰

The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

⁹ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

¹⁰ D.07-01-039, Attachment 7, p. 4

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Public Utilities Code Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹¹

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”¹²

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract

¹¹ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹² See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced and comments were timely received by both The Division of Ratepayer Advocates (DRA) and California Wind Energy Association (CALWEA) on January 8, 2013.

DRA and CALWEA recommend that the CPUC reject the Amended PPA because it is not competitive based on price, value, need or viability relative to projects shortlisted resulting from PG&E's 2011 RPS Solicitation. Furthermore, both DRA and CALWEA contend that the Amended PPA should be compared against bids that are more reflective of market conditions at the time the Amended PPA was negotiated and executed and not against shortlisted bids resulting from PG&E's

2009 RPS Solicitation. DRA comments that the procurement reform ACR¹³ was issued in an attempt to address certain deficiencies in the RPS procurement process and states that continuing to approve projects that provide low ratepayer value, low portfolio fit and viability, the Commission is perpetuating these deficiencies. CALWEA also comments that the CPUC should not wait for a Decision resulting from the procurement reform ACR before applying scrutiny on the Rice Solar project.

Energy Division concurs with DRA and CALWEA and believes that the Amended PPA should be benchmarked against cohorts that reflect current market conditions and not against bids associated with when the Original PPA was executed, but only if the Amended PPA changes materially from the Original PPA, which it did not. The ACR specifically addresses DRA and CALWEA's concerns and proposes mechanisms that will prevent contracts from being negotiated far beyond a reasonable timeline, as is the case with the Rice Solar contract, with the expectation that the evaluation of contracts will always be relative to current market conditions.

FINDINGS AND CONCLUSIONS

1. The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.
2. PG&E adequately examined the reasonableness of the Amended PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.
3. The Commission finds that generation from the Rice Solar project adequately fits the portfolio need requirements of PG&E's RPS portfolio.
4. The price and net market value of the Amended PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation.

¹³ See <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M029/K970/29970716.PDF>

5. The Amended PPA includes the Commission-adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
6. Pursuant to D.02-08-071, PG&E complied with the Commission’s rules for involving the Procurement Review Group.
7. Because the term of the Amended PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
8. The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.
9. The protests of DRA and CARE should be denied.
10. Procurement pursuant to the Amended PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.
11. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the Amended PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with the Amended PPA.
12. The confidential appendices, marked “[REDACTED]” in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
13. The Amended PPA should be approved in its entirety.
14. Advice Letter 3989-E should be approved effective today without modification.
15. Payments made by PG&E under the Amended PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E’s administration of the PPA.

THEREFORE IT IS ORDERED THAT:

1. The power purchase agreement between Pacific Gas and Electric Company and Rice Solar Energy, LLC as proposed in Advice Letter 3989-E is approved without modifications.
2. The protests of the Division of Ratepayer Advocates and Californians for Renewable Energy are denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 24, 2013; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

Confidential Appendix A

Price/Value Reasonableness, Need and Viability

[REDACTED]

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

[REDACTED]

Confidential Appendix C

Amended and Restated Contract Terms and Conditions

[REDACTED]